

Department of Health
Notice of Rulemaking Hearing
Board of Medical Examiners
Division of Health Related Boards

There will be a hearing before the Tennessee Board of Medical Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 63-6-101, 63-6-201, 63-6-204, 63-6-207, 63-6-214, 63-6-224, and Public Chapter 286 of the Public Acts of 2005. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 8:45 a.m. (CST) on the 15th day of November, 2005.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

Substance of Proposed Rules

Amendments

Rule 0880-2-.03 Licensure Process U.S. and Canada Medical School Graduates, is amended by deleting paragraph (5) in its entirety and substituting instead the following language, so that as amended, the new paragraph (5) shall read:

- (5) An applicant shall submit evidence of good moral character. Such evidence shall be two (2) recent (within the preceding six [6] months) original letters from medical professionals, attesting to the applicant's personal character and professional ethics on the signatory's letterhead.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-6-207.

Rule 0880-2-.04 Licensure Process International Medical School Graduates is amended by deleting paragraph (7) in its entirety and substituting instead the following language, so that as amended, the new paragraph (7) shall read:

- (7) An applicant shall submit evidence of good moral character. Such evidence shall be two (2) recent (within the preceding six [6] months) original letters from medical professionals, attesting to the applicant's personal character and professional ethics on the signatory's letterhead.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-6-207.

Rule 0880-2-.05 Licensure of Out of State and International Applicants, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new paragraph (3) shall read:

- (3) An applicant shall submit evidence of good moral character. Such evidence shall be two (2) recent (within the preceding six [6] months) original letters from medical professionals, attesting to the applicant's personal character and professional ethics on the signatory's letterhead.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-6-207.

Rule 0880-2-.20 Medical Professional Corporations and Medical Professional Limited Liability Companies, is amended by deleting paragraphs (1), (2), and (3) in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (5), so that as amended, the new paragraphs (1), (2), (3), and (5) shall read:

- (1) Medical Professional Corporations (MPC) – Except as provided in this rule Medical Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.
 - (a) Filings – A MPC need not file its Charter or its Annual Statement of Qualifications with the Board.
 - (b) Ownership of Stock – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-101-610 only the following may form and own shares of stock in a foreign or domestic MPC doing business in Tennessee:
 - 1. Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 or licensed in another state; and/or

2. A foreign or domestic general partnership, MPC or M PLLC in which all partners, shareholders, members or holders of financial rights are either:
 - (i) Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 to practice medicine in Tennessee or physicians licensed by other states, or composed of entities which are directly or indirectly owned by such licensed physicians; and/or
 - (ii) Professionals authorized by Tennessee Code Annotated 48-101-610 or 48-248-401 or part 1109 of Section 1 of Public Chapter 286 of the Public Acts of 2005 to either own shares of stock in an MPC or be a member or holder of financial rights in an M PLLC; and/or
 - (iii) A combination of professionals authorized by subparts (i) and (ii).

(c) Officers and Directors of Medical Professional Corporations -

1. All, except the following officers, must be persons who are eligible to form or own shares of stock in a medical professional corporation as limited by T.C.A. § 48-101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule:
 - (i) Secretary;
 - (ii) Assistant Secretary;
 - (iii) Treasurer; and
 - (iv) Assistant Treasurer.
2. With respect to members of the Board of Directors, only persons who are eligible to form or own shares of stock in a medical professional corporation as limited by T.C.A. § 48- 101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule shall be directors of a MPC.

(d) Practice Limitations

1. Physician incorporators, shareholders, officers, or directors of a MPC, acting individually or on behalf of, or collectively as the MPC, shall exercise only such authority as an "employing entity"

may exercise pursuant to Tennessee Code Annotated, Section 63-6-204 (e)(1)(A), (B) and (C) regarding diagnosis, treatment and/or referral decisions made by any physician employed by or contracting with or otherwise providing medical services within the scope of their practice within the MPC.

2. A physician shall not enter into an employment, compensation, or other contractual arrangement with a MPC that may violate the code of ethics or which gives the MPC more authority over the physician's diagnosis, treatment and/or referral decisions than an "employing entity" may exercise pursuant to Tennessee Code Annotated, Section 63-6-204 (e)(1)(A), (B) and (C) regarding those decisions.
 3. Engaging in, or allowing another physician incorporator, shareholder, officer, or director, while acting on behalf of the MPC, to engage in, medical practice in any area of practice or specialty beyond that which is specifically set forth in the charter may be a violation of the code of ethics and/or either Tennessee Code Annotated, Sections 63-6-214 (b)(1) or 63-9-111 (b)(1).
 4. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a MPC.
 5. Nothing in these rules shall be construed as prohibiting a MPC from electing to incorporate for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent medical judgment by the physician incorporators, directors, officers, shareholders, employees or contractors of the MPC who are practicing medicine as defined by Tennessee Code Annotated, Section 63-6-204.
 6. Nothing in these rules shall be construed as prohibiting a physician from owning shares of stock in any type of professional corporation other than a MPC so long as such ownership interests do not interfere with the exercise of independent medical judgment by the physician while practicing medicine as defined by Tennessee Code Annotated, Section 63-6-204.
- (2) Medical Professional Limited Liability Companies (MPLLC) – Except as provided in this rule Medical Professional Limited Liability Companies shall be governed by either the provisions of Tennessee Code Annotated, Title 48, Chapter 248 or Public Chapter 286 of the Public Acts of 2005.

- (a) Filings – Articles filed with the Secretary of State shall be deemed to be filed with the Board and no Annual Statement of Qualifications need be filed with the Board.
- (b) Membership – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-248-401 or part 1109 of Section 1 of Public Chapter 286 of the Public Acts of 2005 only the following may be members or holders of financial rights of a foreign or domestic MPLLC doing business in Tennessee:
 - 1. Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 or licensed in other states; and/or
 - 2. A foreign or domestic general partnership, MPC or MPLLC in which all partners, shareholders, members or holders of financial rights are either:
 - (i) Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 to practice medicine in Tennessee or physicians licensed by other states or composed of entities which are directly or indirectly owned by such licensed physicians; and/or
 - (ii) Professionals authorized by Tennessee Code Annotated 48-101-610 or 48-248-401 or part 1109 of Section 1 of Public Chapter 286 of the Public Acts of 2005 to either own shares of stock in an MPC or be a member or holder of financial rights in an MPLLC; and/or
 - (iii) A combination of professionals authorized by subparts (i) and (ii).
- (c) Managers, Directors or Governors of a MPLLC
 - 1. All, except the following managers, must be persons who are eligible to form or become members or holders of financial rights of a medical professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule:
 - (i) Secretary
 - (ii) Treasurer

2. Only persons who are eligible to form or become members or holders of financial rights of a medical professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule shall be allowed to serve as a director, or serve on the Board of Governors of a MPLLC.

(d) Practice Limitations

1. Physician members or holders of financial rights, managers, directors, or governors of a MPLLC, acting individually or on behalf of, or collectively as the MPLLC, shall exercise only such authority as an "employing entity" may exercise pursuant to T.C.A. § 63-6-204 (e)(1)(A), (B) and (C) regarding diagnosis, treatment and/or referral decisions made by any physician employed by or contracting with or otherwise providing medical services within the scope of their practice within the MPLLC.
2. A physician shall not enter into an employment, compensation, or other contractual arrangement with a MPLLC that may violate the code of ethics or which gives the MPLLC more authority over the physician's diagnosis, treatment and/or referral decisions than an "employing entity" may exercise pursuant to T.C.A. § 63-6-204 (e)(1)(A), (B) and (C) regarding those decisions.
3. Engaging in, or allowing another physician member, officer, manager, director, or governor, while acting on behalf of the MPLLC, to engage in, medical practice in any area of practice or specialty beyond that which is specifically set forth in the articles of organization may be a violation of the code of ethics and/or either Tennessee Code Annotated, Sections 63-6-214 (b) (1) or 63-9-111 (b) (1).
4. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a MPLLC.
5. Nothing in these rules shall be construed as prohibiting a MPLLC from electing to form for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent medical judgment by the physician members or holders of financial rights, governors, officers, managers, employees or contractors of the MPLLC who are practicing medicine as defined by Tennessee Code Annotated, Section 63-6-204.

6. Nothing in these rules shall be construed as prohibiting a physician from being a member of any type of professional limited liability company other than a M PLLC so long as such membership interests do not interfere with the exercise of independent medical judgment by the physician while practicing medicine as defined by Tennessee Code Annotated, Section 63-6-204.
 7. All M PLLCs formed in Tennessee pursuant to Tennessee Code Annotated, Section 48-248-104 or Public Chapter 286 of the Public Acts of 2005, to provide services only in states other than Tennessee shall annually file with the Board a notarized statement that they are not providing services in Tennessee.
- (3) Dissolution - The procedure that the Board shall follow to notify the attorney general that a MPC or a M PLLC has violated or is violating any provision of Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005, shall be as follows but shall not terminate or interfere with the secretary of state's authority regarding dissolution pursuant to Tennessee Code Annotated, Sections 48-101-624 or 48-248-409.
- (a) Service of a written notice of violation by the Board on the registered agent of the MPC and/or M PLLC or the secretary of state if a violation of the provisions of Tennessee Code Annotated, Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005 occurs.
 - (b) The notice of violation shall state with reasonable specificity the nature of the alleged violation(s).
 - (c) The notice of violation shall state that the MPC and/or M PLLC must, within sixty (60) days after service of the notice of violation, correct each alleged violation or show to the Board's satisfaction that the alleged violation(s) did not occur.
 - (d) The notice of violation shall state that, if the Board finds that the MPC and/or M PLLC is in violation, the attorney general will be notified and judicial dissolution proceedings may be instituted pursuant to Tennessee Code Annotated, Title 48.
 - (e) The notice of violation shall state that proceedings pursuant to this section shall not be conducted in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 but that the MPC and/or M PLLC, through its agent(s), shall appear before the Board at the time, date, and place as set by the Board and show cause why the Board should not notify the attorney general and reporter that the organization is in violation of the Act or these rules. The Board shall enter

an order that states with reasonable particularity the facts describing each violation and the statutory or rule reference of each violation. These proceedings shall constitute the conduct of administrative rather than disciplinary business.

- (f) If, after the proceeding the Board finds that a MPC and/or MPLLC did violate any provision of Title 48, Chapters 101 and/or 248 or these rules, and failed to correct said violation or demonstrate to the Board's satisfaction that the violation did not occur, the Board shall certify to the attorney general and reporter that it has met all requirements of either Tennessee Code Annotated, Sections 48-101-624 (1) - (3) and/or 48-248-409 (1)-(3) and/or Public Chapter 286 of the Public Acts of 2005.
- (5) The authority to own shares of stock or be members or holders of financial rights in an MPC or an MPLLC granted by statute or these rules to professionals not licensed in this state shall in no way be construed as authorizing the practice of any profession in this state by such unlicensed professionals.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 63-6-101, 63-6-201, 63-6-204, 63-6-214, and Public Chapter 286 of the Public Acts of 2005.

Rule 0880-5-.05 Educational Course, Approval and Curriculum for Limited Certification, is amended by deleting subparagraph (2) (c) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2) (c) shall read:

- (2) (c) Clinical Training - Defined as "hands-on" observation and participation in the production of diagnostic radiographs. Clinical training must be supervised by either a residency-trained radiologist, or by a licensed physician in conjunction and consultation with a fully-licensed and registered operator (A.R.R.T. technologist) with at least three (3) years experience when appropriate. This training shall consist of at least sixty (60) clock hours for each specialty area in which certification is sought.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-6-224.

Rule 0880-5-.06 Examinations for Certification, is amended by deleting part (2) (a) 3. in its entirety.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-6-224.

Rule 0880-5-.11 Bone Densitometry, is amended by deleting part (4) (e) 4. in its entirety and substituting instead the following language, so that as amended, the new part (4) (e) 4. shall read:

- (4) (e) 4. All training must result in a Statement of Training being signed by the Manufacturer (or authorized Representative) or by a person holding a Certificate in Bone Densitometry and who has received machine-specific training by the Manufacturer on the appropriate machine. The Statement of Training shall be issued to the trainee, and sent to the Board's Administrative Office.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, and 63-6-224.

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Contact who can answer questions concerning this notice of rulemaking hearing, technical contact for disk acquisition, and person who will approve final copy for publication: Jerry Kosten, Regulations Manager, Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010 615-532-4397.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Board of Medical Examiners.

Robbie H. Bell, Director
Health Related Boards

Subscribed and sworn to before me this the 20th day of September, 2005.

Notary Public

My commission expires on the 25th day of March, 2006.

The notice of rulemaking set out herein was properly filed in the Department of State on the ____ day of _____, 2005.

Riley C. Darnell
Secretary of State

By: _____